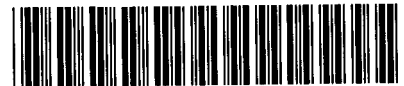


OPEN MEETING ITEM

COMMISSIONERS
GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

ORIGINAL



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AZ CORP COMMISSION
DOCKET CONTROL

DATE: SEPTEMBER 14, 2011

DOCKET NO.: W-02822A-10-0296

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Order on:

SLEEPY HOLLOW MOBILE HOME ESTATES
(CANCEL CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

SEPTEMBER 23, 2011

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

OCTOBER 11, 2011 and OCTOBER 12, 2011

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

SEP 14 2011

DOCKETED BY	
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ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 GARY PIERCE - Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

8 IN THE MATTER OF THE APPLICATION
9 OF SLEEPY HOLLOW MOBILE HOME
ESTATES FOR CANCELLATION OF ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY.

DOCKET NO. W-02822A-10-0296

DECISION NO. _____

OPINION AND ORDER

10 Open Meeting
11 October 11 and 12, 2011
Phoenix, Arizona

12 **BY THE COMMISSION:**

13 Having considered the entire record herein and being fully advised in the premises, the
14 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

15 * * * * *

16 **FINDINGS OF FACT**

17 **Procedural History**

18 1. On July 19, 2010, Sleepy Hollow Mobile Home Estates ("Sleepy Hollow" or
19 "Company"), filed an application with the Commission to cancel the Company's Certificate of
20 Convenience and Necessity ("CC&N") ("Application").

21 2. On July 27, 2010, the Commission's Utilities Division Staff ("Staff") filed its
22 Sufficiency Letter stating that the Application was sufficient pursuant to the Arizona Administrative
23 Code ("A.A.C.").

24 3. On August 3, 2010, a Procedural Order was filed setting a procedural conference for
25 September 8, 2010.

26 4. On August 24, 2010, Staff filed a copy of the Data Requests it sent to Sleepy Hollow.
27
28

1 5. On September 8, 2010, a procedural conference was held as scheduled. At the
2 procedural conference, the parties discussed the necessity for a hearing in this matter and public
3 notice requirements.

4 6. Sleepy Hollow filed its responses to Staff's Data Requests on September 8, 2010.

5 7. On September 10, 2010, a Procedural Order was issued directing the Company to
6 provide notice of the Application to its customers and setting procedural deadlines. The form of
7 notice to be provided to customers advised them that the Commission may act on the Application
8 without a hearing. The notice also instructed customers how they could request a hearing in the
9 matter.

10 8. On September 17, 2010, Sleepy Hollow filed a Certification of Mailing, stating that on
11 May 1, 2010, the Company hand-delivered to each tenant in Sleep Hollow Mobile Home Estates a
12 notice stating that the Company's well was dry and it was purchasing water from the City of Tucson
13 ("City").

14 9. On September 24, 2010, Sleepy Hollow filed a second Certification of Mailing, stating
15 that the Company had hand-delivered to each tenant in Sleep Hollow Mobile Home Estates a copy of
16 the notice required by the September 10, 2010, Procedural Order. No customer comments were filed
17 in response to the notice and no customers requested a hearing.

18 10. On September 24, 2010, Sleepy Hollow filed a copy of a completed Arizona
19 Department of Water Resources ("ADWR") Notice of Well Capping form, indicating that Sleepy
20 Hollow capped its well on September 22, 2010.

21 11. On September 27, 2010, Staff filed its Staff Report recommending approval of the
22 Application subject to certain conditions.

23 **Background**

24 12. Sleepy Hollow is a partnership owned by Danny F. Ng, Pao-Mei Ng, Nola Ng and
25 Nena Ng. The Company provides water utility service to a 10-acre, 283-space mobile home park
26 located within Tucson's city limits. Sleepy Hollow's CC&N was granted in Decision No. 59393
27
28

1 (November 28, 1995).¹

2 13. Sleepy Hollow filed its Application on July 19, 2010, requesting that the Commission
3 cancel its CC&N.

4 14. According to the Company, the well serving the mobile home park, which had been
5 drilled in 1947, began pumping sand. Sleepy Hollow already had an interconnection with the City
6 and, as a result of the well's failure, the Company immediately began buying water from the City in
7 May 2010. Sleepy Hollow provided notice to its customers about the situation on May 1, 2010.

8 15. Sleepy Hollow is not selling any of its assets to the City; it is purchasing water from
9 the City and using the existing infrastructure to distribute the water throughout the mobile home park.
10 According to Staff, "the Company no longer reads any customer meters and...water service is
11 included in the mobile home park rental fee."²

12 16. Staff stated that it contacted the City to discuss the Application. According to Staff,
13 the City does not object to being the permanent source of water for the mobile home park.

14 17. In its Application, the Company noted that there are no customer deposits, and no
15 refunds are due on meter and service line installations or pursuant to main extension agreements.

16 18. Staff concluded that, based on the facts in this case, cancelling Sleepy Hollow's
17 CC&N will not have an adverse effect on the Company's customers or their water service.³

18 19. Sleepy Hollow's water system consisted of one well, a 5,000 gallon pressure tank and
19 the distribution system. The Company capped its well on September 22, 2010, and in its responses to
20 Staff's Data Requests, Sleepy Hollow stated that it has no plans to reopen its well.⁴

21 20. Staff indicated that according to a June 28, 2010, notice sent to Sleepy Hollow by the
22 Pima County Department of Environmental Quality ("PDEQ"), the Company's water system no
23 longer meets the definition of a public water system as defined by A.A.C. R18-4-102, 40 CFR 141.2
24 and A.R.S. § 49-352(B). Staff stated the PDEQ notice also indicated that the well had been shut

25 ¹ The Staff Report states that Sleepy Hollow is a non-profit corporation, but Decision No. 59393, the Company's Annual
26 Report to the Commission's Utilities Division and the Application state that it is a partnership. According to Decision
27 No. 59393, the mobile home park had been in existence since the 1960's, but the Commission only became aware of the
existence of the water system after a customer complained of a water outage.

² Staff Report, Attachment A, page 1.

³ *Id.*, page 3.

⁴ Notice of Well Capping filed September 22, 2010; Responses to Data Requests filed September 8, 2010.

1 down and a permanent connection with the City had been established.

2 21. Staff reported that, according to an ADWR compliance report, as of August 23, 2010,
3 Sleepy Hollow is no longer an active public water system and is no longer regulated by ADWR.
4 According to Staff, ADWR reported that at the time ADWR placed Sleepy Hollow on inactive water
5 provider status, the Company was in compliance with ADWR regulations governing water providers.

6 22. Staff also noted that at the time of the ADWR compliance report, Sleepy Hollow had
7 not filed the Notice of Well Capping and ADWR still reported the well as being active.

8 23. Staff reported that the Company has no delinquent Commission compliance items.

9 **Recommendations**

10 24. Staff recommended approval of the Application subject to two conditions: 1) that
11 Sleepy Hollow should prepare an ADWR Notice of Well Capping form; and 2) that Sleepy Hollow
12 should be required to file with Docket Control copies of the Notice of Well Capping form filed with
13 ADWR, as well as proof that the form has been filed with ADWR, within 45 days of the effective
14 date of this Decision.

15 25. On September 24, 2010, Sleepy Hollow filed with the Commission a completed copy
16 of the ADWR Notice of Well Capping form, but it did not file proof that the form had been filed with
17 ADWR. Consequently, Staff's first condition has been met, as well as part of Staff's second
18 recommendation.

19 26. Accordingly, we believe it is reasonable to modify Staff's second condition to require
20 that Sleepy Hollow file with Docket Control, as a compliance item in this docket, within 45 days of
21 the effective date of this Decision, proof that the Notice of Well Capping form has been filed with
22 ADWR.

23 27. In the Decision granting Sleepy Hollow's CC&N, we found that the Company was a
24 public service corporation subject to Commission jurisdiction. Sleepy Hollow is currently buying
25 water from the City and is no longer operating its own system; it is only providing purchased water to
26 tenants in the mobile home park. Additionally, the customers are not being billed by Sleepy Hollow
27 for actual water usage; they are only being charged a monthly fee. These facts are similar to those in
28 *Arizona Corporation Commission v. Nicholson*, 108 Ariz. 317, 497 P.2d 815 (1972), in which the

1 Arizona Supreme Court found that an entity that owned a mobile home park and did not provide
2 water outside the mobile home park, and imposed only one monthly charge to the tenants, was not a
3 public service corporation and, therefore, not subject to Commission jurisdiction.

4 28. Accordingly, we find that under the facts of this case, once Sleepy Hollow has
5 complied with the condition stated earlier, the Company will no longer be a public service
6 corporation.

7 29. Based on the record in this matter, we believe Sleepy Hollow's Application to cancel
8 its CC&N is in the public interest and should be approved, subject to compliance with Staff's
9 remaining recommendation, as modified.

10 30. Further, because 1) notice of the Application was provided to customers; 2) the notice
11 stated that approval of the Application may be given without a hearing; 3) no customers requested a
12 hearing; 4) Sleepy Hollow notified customers that it was purchasing water from the City; and, 5) we
13 have found that cancellation of Sleepy Hollow's CC&N is in the public interest, we find that a
14 hearing in this matter is not necessary.

15 CONCLUSIONS OF LAW

16 1. Sleepy Hollow is a public service corporation within the meaning of Article XV of the
17 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

18 2. The Commission has jurisdiction over Sleepy Hollow and the subject matter of the
19 Application.

20 3. Notice of the Application was provided as required by law.

21 4. Upon compliance with the condition stated herein, Sleepy Hollow will no longer be a
22 public service corporation within the meaning of Article XV of the Arizona Constitution.

23 5. Cancellation of Sleepy Hollow's CC&N is in the public interest.

24 6. For the reasons stated herein, a hearing is not necessary in this matter.

25 7. Staff's recommendation to approve the Application, subject to compliance with its
26 sole condition, as modified, is reasonable and should be adopted.

27 ...

28 ...

ORDER

IT IS THEREFORE ORDERED that Sleepy Hollow Mobile Home Estates' Application to cancel its CC&N is approved, subject to compliance with Staff's recommendation, as modified.

IT IS FURTHER ORDERED that Sleepy Hollow Mobile Home Estates shall file with Docket Control, as a compliance item in this docket, within 45 days of the effective date of this Decision, proof that the Notice of Well Capping form has been filed with the Arizona Department of Water Resources.

IT IS FURTHER ORDERED that the cancellation of Sleepy Hollow Mobile Home Estates' CC&N shall be considered null and void, after due process, if Sleepy Hollow Mobile Home Estates fails to meet the above-stated condition.

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IT IS FURTHER ORDERED that, upon filing the required documentation, Sleepy Hollow Mobile Home Estates' Certificate of Convenience and Necessity shall be cancelled without further action of the Commission.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: SLEEPY HOLLOW MOBILE HOME ESTATES

2 DOCKET NOS.: W-02822A-10-0296

3
4 Danny F. Ng
SLEEPY HOLLOW MOBILE HOME ESTATES
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5 Tucson, Arizona 85705

6 Janice Alward, Chief Counsel
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7 1200 W. Washington Street
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8 Steven M. Olea, Director
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